

GAHC010159152018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5000/2018

MD. BAKKAR ALI SK @ BAKKAR ALI AND 2 ORS.
S/O- LATE KETU SHEIKH, VILL NO. 2 PATKATA, P.O- MONAKOCHA, P.S-
MANIKPUR, DIST- BONGAIGAON, ASSAM, PIN- 783391

2: ABUL HUSSAIN
S/O- LATE KETU SHEIKH
VILL NO. 2 PATKATA
P.O- MONAKOCHA
P.S- MANIKPUR
DIST- BONGAIGAON
ASSAM
PIN- 783391

3: OMILA BEWA
D/O- SAHAD ALI
W/O- LATE KETU SHEIKH
VILL NO. 2 PATKATA
P.O- MONAKOCHA
P.S- MANIKPUR
DIST- BONGAIGAON
ASSAM
PIN- 78339

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY OF THE MIN OF HOME AFFAIRS, GOVT OF
INDIA, NEW DELHI- 01

2: THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 6

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 01

4:THE STATE COORDINATOR
OF NRC
ASSAM
DISPUR
GUWAHATI- 6

5:THE DEPUTY COMMISSIONER
BONGAIGAON
DIST- BONGAIGAON
ASSAM
PIN- 783380

6:THE SUPERINTENDENT OF POLICE
BONGAIGAON
ASSAM
PIN- 783380

7:THE OFFICER IN CHARGE
MANIKPUR POLICE STATION
DIST- BONGAIGAON
ASSAM
PIN- 78339

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

**HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN**

O R D E R

26.04.2023

(A.M. Bujor Barua, J)

Heard Mr. MI Hussain, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Mr. A Kalita, learned counsel for the State

respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Mr. PK Medhi, learned counsel for the Deputy Commissioner, Bongaigaon.

2. The petitioners Md. Bakkar Ali Sk son of late Ketu Sheikh, Md. Abul Hussain son of late Ketu Sheikh and Omila Bewa wife of late Ketu Sheikh have instituted this writ petition being aggrieved by the order dated 18.05.2018 rendered by the Foreigners Tribunal No. 1, Bongaigaon in three separate cases being BNGN/FT/Case No. 3531/2008, BNGN/FT/Case No.3533/2008 and BNGN/FT/Case No.3535/2008. By an earlier opinion dated 08.02.2016 in BNGN/FT/Case No.3581/2008, the petitioner No. 1 Md. Bakkar Ali was declared to be a person who entered the State of Assam from the specified territory between the years 1966 and 1971. By the opinion dated 08.02.2016 in BNGN/FT/Case No.3533/2008, the petitioner No. 2 Md. Abdul Hussain @ Abul Hussain was declared to be an Indian citizen whereas by the opinion dated 16.04.2016 in BNGN/FT/Case No.3535/2008, the petitioner No. 3 Omila Bewa was also declared to be an Indian citizen.

3. The petitioner No. 1 Md. Bakkar Ali Sheikh being aggrieved by the declaration that he is a person who entered the State of Assam from the specified territory between the years 1966 and 1971, instituted WP(C) No. 7098/2016. During the course of hearing of WP(C) No. 7098/2016, illegalities were noticed in the two opinions dated 08.02.2016 in BNGN/FT/Case No.3533/2008 and dated 16.04.2016 in BNGN/FT/Case No.3535/2008 whereby the petitioners No. 2 and 3 were declared to be Indian citizens and accordingly WP(C)(Suo Moto) 15/2017 and WP(C) (Suo Moto) 16/2017 were registered. All the three writ petitions were adjudicated by the common order dated 21.02.2018, by which, by setting aside the three opinions dated 08.02.2016 and

16.04.2016 respectively, the matter was remanded back to the Tribunal requiring all the three writ petitioners to appear before the Tribunal and discharge their burden under section 9 of the Foreigners Act, 1946 (in short Act of 1946). In the resultant circumstance, the order impugned in this writ petition dated 18.05.2018 in BNGN/FT/Case No.3531/2008, BNGN/FT/Case No.3533/2008 and BNGN/FT/Case No.3535/2008 was passed.

4. It is stated that, in the order dated 21.02.2018 in the three writ petitions, it was also provided that the Tribunal would decide the respective claims of the petitioners on the basis of the materials that were already submitted by the petitioners. The grievance raised by the petitioners in this writ petition is that they have some further materials to establish that they are citizens of India and accordingly are in a position to discharge their burden under section 9 of the Act of 1946.

5. In view of the aforesaid stand, we remand the matter back to the Tribunal once again where the petitioners will be allowed to produce any relevant material as they may desire so to discharge the burden under section 9 of the Act of 1946. In doing so, the State respondents through the Home department may also make a verification of the claims and materials produced by the petitioners and submit their report before the Tribunal. Upon doing the needful as indicated above, a reasoned order be passed.

6. If the reasoned order is in favour of the petitioners, the same shall prevail over the earlier opinions dated 18.05.2018 and if it goes against the petitioners, consequence as per law shall follow.

7. The petitioners shall appear before the Foreigners Tribunal No. 1, Bongaigaon on 06.06.2023. Till the reasoned order is passed, no coercive action

be taken against the petitioners.

8. The writ petition is allowed as indicated above.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant